

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

LUIS E. DUBON-OTERO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil No. 05-1549(JAF)

(Criminal No. 97-091)

ORDER

The present Federal habeas corpus petition (18 U.S.C. § 2255) seeks a Booker resentencing hearing against a sixty-month criminal sentence imposed on August 1, 2000. See Booker v. United States, ___ U.S. ___, 125 S.Ct. 738 (2005). The underlying facts can be gleaned from the appellate decision affirming the conviction and sentence. See United States v. Dubón-Otero, 292 F.3d 1 (1st Cir. 2002).

There being no Apprendi¹/Booker issue to address on collateral review, we summarily deny the petition as meritless under Rule 4 of the Rules Governing Section 2255 Petitions in United States District Courts.

The bottom line in movant's argument is that during the 2000 hearing, we denied a requested downward departure based on the defendant's history of charitable acts and donations. Counsel now

¹Apprendi v. New Jersey, 530 U.S. 466 (2000). At the time of the original sentencing, Petitioner raised an Apprendi claim, and we denied relief. The claim was abandoned on appeal.

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1 believes that in the post-Booker era, such downward departure is a
2 possibility if the court would choose to impose a non-guideline
3 sentence.

4 Originally, and under the mandatory guideline regime, we refused
5 to depart on such basis. At that time, we never intimated a
6 willingness to depart had the mandatory guidelines so allowed.
7 Today, our view is the same. Such departure is not available, nor
8 are we willing to craft one under non-guideline, post-Booker
9 sentencing principles if presented with such opportunity.

10 The request for post-Booker retroactive relief is **DENIED.**

11 **IT IS SO ORDERED.**

12 San Juan, Puerto Rico, this 24th day of August, 2005.

13 S/José Antonio Fusté
14 JOSE ANTONIO FUSTE
15 Chief U. S. District Judge